

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**CHARLESTON DIVISION**

ROBERT B. JOSEPH,

Petitioner,

v.

CIVIL ACTION NO. 2:13-cv-28391

MARVIN C. PLUMLEY,  
Warden,

Respondent.

**MEMORANDUM OPINION AND ORDER**

Pending before the Court is Respondent's Motion for Summary Judgment (ECF No. 15). By Standing Order entered April 8, 2013, and filed in this case on November 12, 2013, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of proposed findings and recommendations for disposition ("PF&R"). (ECF No. 3.) On January 6, 2016, the Clerk transferred the referral of this action to United States Magistrate Judge Omar J. Aboulhosn. (ECF No. 23.) On October 11, 2016, Magistrate Judge Aboulhosn filed his Amended PF&R (ECF No. 27) recommending that this Court **GRANT** Respondent's Motion for Summary Judgment and **DISMISS** Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person Under State Custody.

The Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file

timely objections constitutes a waiver of *de novo* review and the Petitioner's right to appeal this Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir. 1984). In addition, this Court need not conduct a *de novo* review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). Objections to the PF&R in this case were originally due on October 28, 2016. On November 9, 2016, this Court granted Petitioner's Motion for Time Extension (ECF No. 29), making objections due November 14, 2016. To date, no objections have been filed.


Accordingly, the Court **ADOPTS** the Amended PF&R (ECF No. 27), **GRANTS** Respondent's Motion for Summary Judgment (ECF No. 15), **DISMISSES** Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus by a Person Under State Custody (ECF No. 1), and **DIRECTS** the Clerk to remove this case from the Court's docket.

**IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability as Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); *Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong) (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). Pursuant to Rule 11(a), Petitioner may not appeal the District Court's denial of a certificate of appealability, but he may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22.

**IT IS SO ORDERED.**

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: March 14, 2017



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THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE